

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ESTRELLA ADELA JAVIER and
DANIELA JAVIER, minor children of
Wilbert Javier Prado, appearing by their
Guardian *ad Litem*, Ernesto Romero,

ESTATE OF WILBERT JAVIER
PRADO, by PATRICIA D. JURSIK,
Special Administrator,

Case No: 07-C-0204

Plaintiffs,

v.

CITY OF MILWAUKEE,

ESTATE OF ALFONZO C. GLOVER,

Defendants.

**PLAINTIFFS' MOTION FOR LEAVE TO FILE SURREPLY BRIEF
OPPOSING MOTION OF DEFENDANT, CITY OF MILWAUKEE,
TO STAY DISCOVERY RELATING TO
FEDERAL MUNICIPAL LIABILITY CLAIM**

Plaintiffs respectfully move the Court, pursuant to Eastern District of Wisconsin Civil L.R. 7.1, for leave to file the attached Plaintiffs' Surreply Brief Opposing Motion of Defendant, City of Milwaukee, to Stay Discovery Relating to Federal Municipal Liability Claim and Affidavit of James R. Unrath. The basis for such Motion is as follows:

1. In its initial motion and brief filed on June 19, 2007, the City claimed as one of the reasons allegedly warranting bifurcation of discovery that Plaintiffs' document requests in this case "go well beyond" the document requests that the City responded to in the pending *Fields* case (City's Initial Br. at 2).

2. In Plaintiffs' response brief filed on July 10, 2007, Plaintiffs responded to the City's claim by presenting evidence that the discovery request in *Fields* was actually broader than the discovery request in this case and, in response to that request, the City had produced approximately 100,000 pages of documents without any objection on grounds of burden.

3. In the City's untimely reply brief filed on July 27, 2007, the City presented new evidence that it claims demonstrates that the discovery request in this case is broader than the discovery request in *Fields*. Specifically, in the Supplemental Affidavit of Jan A. Smokowicz as Attachment A, the City produced a printout obtained from the Milwaukee Police Department listing allegations and investigations of use of force from approximately 2000 to 2006. The printout is dated June 18, 2007, *prior* to the submission of the City's initial brief, but not included or referenced in it.

4. The City claims that Attachment A confirms that the discovery sought here is more burdensome than that which the City produced in *Fields* (City's Reply Br. at 2-3, 5). According to the City, "the materials produced [in *Fields*] relate only to incidents in which the use of firearms or deadly force occurred." (*Id.* at 2). The City utilizes Attachment A to argue that what it actually produced in *Fields* was a smaller subset of documents related to deadly use of force or incidents of force in which a firearm was used (City's Reply Br. at 5).

5. Before Plaintiffs had an opportunity to alert this Court to the inaccuracy of the City's claims about the content of the document production in

Fields, the City filed a Supplemental Reply Brief and Affidavit of Jan A. Smokowicz on August 10, 2007, in which it admitted that it had not accurately characterized the content of the above-described document production in *Fields*. Specifically, the City admitted that its document production in *Fields* was not limited to deadly force or use of force involving a firearm as it had earlier claimed.

6. In fairness and the interest of justice, Plaintiffs respectfully request an opportunity to respond to the City's new evidence, new argument, and its most recent filing, which was filed without leave of Court.

7. Therefore, Plaintiffs respectfully request that the Court accept for filing the following simultaneously filed documents: Plaintiffs' Surreply Brief Opposing Motion of Defendant, City of Milwaukee, to Stay Discovery Relating to Federal Municipal Liability Claim and Affidavit of James R. Unrath.

Dated this 22nd day of August, 2007

Respectfully submitted,

DEWITT ROSS & STEVENS s.c.

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